

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 00-2169

BOURNE MANOR EXTENDED CARE FACILITY

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This case is before the Court on the petition of Bourne Manor Extended Care Facility ("the Nursing Home") to review and set aside a decision and order of the National Labor Relations Board ("the Board"). The decision and order issued on

September 15, 2000, and is reported at 332 NLRB No. 11. (A 519-28.)¹ The Board has filed a cross-application for enforcement of its order. The Nursing Home's petition for review and the Board's cross-application for enforcement were timely as the Act imposes no time limitations on such filings.

The Board had subject matter jurisdiction under Section 10(a) of the National Labor Relations Act, as amended (29 U.S.C. § 160(a)) ("the Act"). The Board's order is final with respect to all the parties under Section 10(e) of the Act (29 U.S.C. § 160(e)). The Court has jurisdiction under Section 10(e) and (f) of the Act (29 U.S.C. § 160(e) and (f)) because the unfair labor practices occurred in Bourne, Massachusetts.

STATEMENT OF THE ISSUE

Whether substantial evidence on the record as a whole supports the Board's finding that the Nursing Home violated Section 8(a)(3) and (1) of the Act by suspending and discharging employee Nancy-Anne Bjorkman for engaging in union and other protected concerted activities.

STATEMENT OF THE CASE

Acting on two unfair labor practice charges filed against the Nursing Home by Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 59, International Brotherhood of Teamsters ("the Union"), and by employee Nancy-

¹ "A" refers to the joint appendix. References preceding a semicolon are to the

Anne Bjorkman ("Mrs. Bjorkman"), the Board's General Counsel issued a consolidated complaint alleging that the Nursing Home violated Section 8(a)(3) and (1) of the Act (29 U.S.C. § 158(a)(3) and (1)). (A 576-94.) The matter was litigated before an administrative law judge. (A 1-13.) The judge found that the Nursing Home had violated the Act as alleged in the complaint and recommended entry by the Board of an appropriate remedial order. (A 520-28.) The Nursing Home filed exceptions to the administrative law judge's decision. On September 15, 2000, the Board issued a decision and order, affirming the administrative law judge's finding and conclusions, and adopting his recommended order, with modifications. (A 519-28.) The factual findings on which the Board based its conclusions and order are set forth in detail below.

STATEMENT OF FACTS

I. THE BOARD'S FINDINGS OF FACT

A. Background

The Nursing Home operates a nursing home in Bourne, Massachusetts. In June 1989, it hired Mrs. Bjorkman as a certified nursing aide ("CNA"). She worked 40 hours a week on the night shift, from 11 p.m. to 7 a.m. (A 521; 30, 89-90.) The Nursing Home regarded her as a "good, dependable employee" and an

Board's findings; those following are to the supporting evidence.

"excellent worker." It once named her employee of the year. (A 521; 35, 129-30, 379, 748-57.)

In 1996, Mrs. Bjorkman spearheaded an organizing drive to obtain union representation for the Nursing Home's CNAs. She contacted the Union, met with its representatives, and obtained and distributed authorization cards. The Board conducted an election among the employees, and the Union lost. (A 521; 31-33, 205-06.)

In February 1998,² Mrs. Bjorkman separated from her husband. On February 26, she obtained a restraining order against him, which prohibited him from abusing her, from contacting her, and from going to her residence or to her workplace. On March 12, the order was extended for one year. On April 10, the order was modified to permit Mr. Bjorkman visitation with the couple's three children, who lived with Mrs. Bjorkman. In other respects, the original restriction continued in effect. (A 521 n.4, 7; 36-39, 627.)

B. Mrs. Bjorkman Initiates a Second Union Drive; the Nursing Home's New Administrator Garrate Driscoll Directs the Antiunion Campaign; the Union Wins the Election

In mid-April, Mrs. Bjorkman initiated a second union organizing campaign. She contacted the Union, and obtained and distributed authorization cards. (A 521, 526; 33, 620.)

² Dates are in 1998, unless otherwise specified.

On May 4, Garrate Driscoll became the Nursing Home's new administrator. (A 520-21; 247, 249-50, 604, 622-25.) He immediately took over the role of directing the Nursing Home's antiunion campaign. (A 525-26; 249-50, 602-25.) During his first 5 to 10 days on the job, Mrs. Bjorkman's name came up, two to 2 to 3 dozen times, as being the driving force behind the union organizing drive. (A 521; 254-56.) Driscoll conducted numerous mandatory meetings for supervisors in which he instructed them about the Nursing Home's position. (A 525; 127-8, 138-43, 252-264, 603-25.) He also instructed the supervisors to "go out and say [to the employees] that the Union would be a bad thing." (A 139, 166-168.) He told the supervisors to use "any reason that [they] might know," including that "he came from a [u]nion [nursing] home and . . . had experience administering a [u]nion home, and it wasn't a good thing. That in fact it would be better to be non-[u]nion." (A 139-40.)

On June 5, the Board conducted the election. Mrs. Bjorkman served as an observer for the Union. The Union won the election, and the Board certified the Union as the employees' collective-bargaining representative. (A 521; 33, 205-06, 255, 580, 623-24.)

An article in the June 10 the Cape Cod Times, a local newspaper, quoted Administrator Driscoll as saying that none of the Nursing Home's full-time employees paid \$300 a month for health insurance, and that the monthly health

insurance cost for a full-time employee was \$120. (A 525; 260-62, 778, 780-81.)

By letter dated June 11, Mrs. Bjorkman informed Driscoll that his comment in the newspaper article was untrue and that her monthly health insurance costs were more than Driscoll had stated. (A 525, 260-62, 778.) That same day, Driscoll replied to Mrs. Bjorkman and admitted his error. (A 262, 780-81.) Afterwards, Driscoll told Supervisor Michael Silva that Mrs. Bjorkman was "a thorn in the side" or "a pain in the ass" for, among other things, writing letters to the Nursing Home and making him "eat crow." (A 525; 140-41, 260-62.)

C. Contract Negotiations Begin with Mrs. Bjorkman as a Member of the Union's Bargaining Team; Mrs. Bjorkman Changes the Locks on Her Home; Mr. Bjorkman Threatens to Get Even and Informs Administrator Driscoll that Mrs. Bjorkman Was Stealing from the Nursing Home

On August 27, the Nursing Home and the Union commenced negotiations for an initial collective-bargaining agreement. The Union's negotiating team consisted of eight members, including Mrs. Bjorkman and CNA Amy Cardoza. (A 521; 34, 63-64, 206, 580.)

On August 28, Mrs. Bjorkman changed the locks on her house. (A 521; 42.) That same day, Mr. Bjorkman tried unsuccessfully to enter the house. He became angry, yelled "some nice, choice words" at Mrs. Bjorkman, and told her, "I will get you for this." (A 521; 42-43.)

That same day, Mr. Bjorkman telephoned the Nursing Home and identified himself to the receptionist as "Mr. Gibson." (A 521; 267.) When Administrator Driscoll picked up the phone, Mr. Bjorkman revealed his true identity and stated that he "had some important information" for Driscoll. Mr. Bjorkman told Driscoll that "he was going through some tough married times," that he thought the locks on the doors had been changed, and that "it was time that [his wife] was taught a lesson." (A 521; 267-68, 270, 380.) Driscoll asked Mr. Bjorkman what he was talking about, and he reiterated that "his marriage was going down the tubes" and he was "going to get even with [his wife]." (A 268.) Mr. Bjorkman said that his wife had been stealing from the Nursing Home for years, and "rattled off all sorts of merchandise" she allegedly had stolen, including blankets, towels, creams, toothbrushes, toothpaste and razors. (A 268, 271, 782.) He added that his wife had been stealing diet pills and giving them to employee Cardoza. He also said that "others were taking stuff and stealing." (A 521; 268-69, 272-73, 782.)

Mr. Bjorkman also accused Supervisor Silva of passing information to the Union and of permitting union supporters to get into the Nursing Home's offices at night. (A 521; 269, 782.) In addition, he advised Driscoll not to call the local police about the theft accusations because the brother of a friend of Mrs. Bjorkman worked for the police. (A 521; 271-72.)

Immediately, Driscoll telephoned Jeff Stevens, the Director of Human Resources for Berkshire Health Care Corporation, the Nursing Home's parent company. (A 521, 526; 275-76.) Driscoll informed Stevens of Mr. Bjorkman's accusations. Driscoll noted that he was concerned about the accusations, particularly in light of Mrs. Bjorkman's role as the leading union activist. (A 274-75.) Stevens told Driscoll that Mr. Bjorkman had made similar accusations previously, and suggested that Driscoll speak to former Administrator Ken Persinko. (A 521; 276-77.) Driscoll telephoned Persinko, who confirmed Stevens' recollection and told Driscoll to get physical proof from Mr. Bjorkman. (A 277, 281, 439-40.)

Around the same time, Human Resources Manager Susan Snider informed Supervisor Silva that Mr. Bjorkman had accused him of assisting the union campaign. At that time, Silva had begun working at the facility on a per diem basis. Based on Mr. Bjorkman's accusation, Driscoll barred Silva from ever entering the facility again. (A 526; 144-45.)

D. Mr. Bjorkman Visits the Nursing Home's Facility in Violation of the Restraining Order Against Him; Mr. Bjorkman Accuses Employee Arlene Lima of Stealing From the Facility; Driscoll Urges Mr. Bjorkman to Provide Proof to Support the Theft Accusations; Mr. Bjorkman Gives Driscoll Razors

On August 29 or 30, Mr. Bjorkman went to the Nursing Home's facility in violation of the restraining order against him. (A 724; 507, 626-27.) Employee

Jane O'Hara saw him in the lobby, near the receptionist's area. She told employee Becky Bjorkman, the daughter of Mr. and Mrs. Bjorkman, that her father was in the facility. Becky Bjorkman went in search of her father. He was near the facility's dining room when she found him. (A 524; 375, 507-08.)

During the first week of September 1998, Driscoll asked Elaine O'Brien, the facility's Director of Nursing ("DON"), Millie Griffith, its Director of Clinical Services, and Sue Ganzer, the Administrator of the Nursing Home's parent company, about the allegation that Mrs. Bjorkman had stolen medicine and diet pills. Specifically, Driscoll inquired how he could determine if medicine and diet pills had been stolen. They told him that the facility did not have an inventory control procedure for some types of medications, and it did not stockpile the particular diet pill that Mr. Bjorkman accused his wife of stealing. (A 522; 284-88, 389-90, 455.) Driscoll also spoke to the inventory control clerk, who told him that the Nursing Home had no method of telling if toiletries were being stolen because of deficiencies in the Nursing Home's inventory control program. (A 522; 284-86, 455.)

Around the same time, Driscoll again spoke to Director of Human Resources Stevens about getting evidence to support Mr. Bjorkman's theft accusations against Mrs. Bjorkman. (A 522; 283.) Stevens advised Driscoll that Mr. Bjorkman had to produce some physical proof. (A 522; 282-83.)

On September 4, Driscoll telephoned Mr. Bjorkman and left a message with a "Mrs. Jackson," who stated that she was Mr. Bjorkman's landlady. (A 281.) On September 7, Mr. Bjorkman returned Driscoll's telephone call. Mr. Bjorkman began the conversation by "spout[ing] off about his marital problems" and "his desire for revenge" against his wife. (A 522; 291-92.) Mr. Bjorkman also accused night-shift CNA Arlene Lima of stealing goods from the facility and selling them. (A 272-73.) Driscoll replied, "I have to have some physical evidence and without physical evidence I'm afraid that I have nothing to pursue. Can you get me some physical evidence?" (A 522; 292.) Mr. Bjorkman said he "might be able to do that." (A 522; 292.) Driscoll reiterated, "I need some physical evidence and you have my [phone] number. If you should decide to give me something give me a call." (A 412.)

The next day, September 8, Mr. Bjorkman telephoned the Nursing Home, stated that he was "Mr. Gibson," and asked to speak to Driscoll. He told Driscoll, "I've got stuff for you." Driscoll asked what the stuff was; Mr. Bjorkman replied that he had some razors. They arranged to meet at a parking lot in town. (A 522; 293-94.)

When they met, Mr. Bjorkman was carrying a plastic Wal-Mart bag, which he gave to Driscoll. (A 522; 294, 409.) The bag contained 2 sealed packs of 10 "Gillette Good News" disposable razors each, displaying the "Baxter Health Care

Corporation" logo and labeled "Not for Retail Sale." (A 522 n.8; 296-97, 782.)

Mr. Bjorkman ranted that his wife "deserved this." He told Driscoll that the razors were from his home. (A 522; 294-96, 409.)

Driscoll returned to the facility, where he compared the razors he had received from Mr. Bjorkman with those used by the Nursing Home. They appeared identical. (A 522; 296-99.)

E. The Nursing Home's Counsel Interviews Mr. Bjorkman and Prepares an Affidavit; the Police Arrest Mr. Bjorkman for Violating the Restraining Order; Driscoll Repeatedly Urges Mr. Bjorkman to Sign the Affidavit

On September 10, Driscoll informed Human Resources Director Stevens that he had received razors from Mr. Bjorkman. (A 522; 300-01.) Stevens instructed Driscoll on how to proceed. Pursuant to that instruction, Driscoll arranged for the Nursing Home's counsel, David Mandel, to meet with, and take an affidavit from, Mr. Bjorkman. (A 522; 303, 461-62.) The meeting occurred on September 17, in Driscoll's office. (A 522; 303-04, 461-62.) In late September, Mandel prepared and mailed the affidavit to Mr. Bjorkman for his signature. (A 521 n.5, 522; 461-62.)

On October 4, Mr. Bjorkman went to the family home, where he charged at his wife while he yelled insults and allegations at her. He threatened that he was going to her workplace to get her fired. The police were called, and they arrested Mr. Bjorkman. (A 628, 804.)

By October 28, Mr. Bjorkman had not returned the affidavit, and Driscoll telephoned him twice to find out why. (A 522; 306, 309, 414.) Mr. Bjorkman started the conversations with "allegations and a dissertation . . . of his problems and his desire for revenge against his wife." (A 306.) He also asserted, for the first time, that employee Arlene Lima "smoked pot." (A 306-07, 376.) Driscoll asked Mr. Bjorkman why he had not returned the affidavit. Mr. Bjorkman stated that he had not received it. Driscoll promised to send him another copy. (A 307-08.)

By late November, Mr. Bjorkman still had not returned the affidavit. Driscoll again telephoned him about the delay. Mr. Bjorkman acknowledged that he had received the affidavit, but explained that his lawyer told him not to sign the affidavit as he might suffer some unspecified economic harm as a result. Driscoll urged Mr. Bjorkman to sign the affidavit. (A 522 n.9; 309-11.)

F. Driscoll Confronts Mrs. Bjorkman with the Theft Accusations and Questions Her About Taking the Nursing Home's Property Home or For Her Personal Use

On December 7, Director of Clinical Services Griffith summoned Mrs. Bjorkman to the office, where Driscoll informed her that she was under investigation for theft. Mrs. Bjorkman replied, "You're kidding, right?" (A 523; 34-35, 45-47, 80-81, 321.) Driscoll said he was serious. Mrs. Bjorkman asked if her husband was behind the investigation. Driscoll said yes. Mrs. Bjorkman asked Driscoll if he knew that they were having marital problems and were "breaking

up." He responded that he "was very much aware that [her husband's] motive could, in fact, be revenge." (A 523, 526; 47, 82-83, 311.)

Driscoll then asked Mrs. Bjorkman a series of questions from a prepared list about whether she had ever taken specific items from the facility to her residence, or for her personal use. Mrs. Bjorkman denied that she had ever taken the Nursing Home's property to her home. She stated that the only item she had ever taken was Purell, an anti-bacterial sanitizing lotion used by employees for cleaning hands and medical instruments between handling residents. (A 522, n.10; 47-48, 51, 61, 74, 78, 184-85, 324.)³ Mrs. Bjorkman explained to Driscoll that she kept a small amount of Purell in her tote bag to have it available when she handled the residents. (A 61.) She removed a four-ounce bottle of Purell from her tote bag and placed it on the table. (A 78, 85.) She explained that she replenished the Purell in her bottle by draining the remains from larger bottles that were about to be thrown out. (A 52, 84-86, 91-92.)

³ Although the Nursing Home provided a large pump bottle of Purell in each unit of the facility, the bottle was not always available during the night shift, when Mrs. Bjorkman worked, and when it was available, the lotion was usually too low to be dispensed through the pump mechanism. (A 522, n.10; 47-48, 51, 61, 74, 78, 184-85, 324.) The Nursing Home stored Purell in its Central Supply. The central supply clerk was not on duty during the night shift. The Nursing Home kept the key for Central Supply under seal, and anyone wishing to use that key had to get a nurse's permission and sign a log. (A 96-99, 184-85.)

Driscoll then asked Mrs. Bjorkman if she had in her home any sealed bags of disposable Gillette razors labeled "Baxter for institutional use." She replied that she had disposable razors at home, which she bought for herself and her daughters, but that she was uncertain about what brand they were. She denied ever taking any disposable razors from the facility. (A 523; 50-51, 56, 87-88.) At the end of the meeting, Mrs. Bjorkman asked Driscoll to speak with her co-workers about the theft accusations. Driscoll said he would. (A 523; 52-53.)

After a bargaining session on December 10, Mrs. Bjorkman, accompanied by employee Cardoza, requested a meeting with Driscoll. Mrs. Bjorkman asked Driscoll what he had found out about the theft accusations against her, and if he had spoken to any of her co-workers. (A 523; 53, 77, 101-02, 273.) Driscoll did not answer. Instead, he stated that her husband was "a class one act "who "was out for revenge," but he believed her husband's theft allegations. (A 523; 54, 77, 113-15.) Mrs. Bjorkman urged Driscoll to speak to her co-workers. (A 523; 54.)

Driscoll then questioned Mrs. Bjorkman about her taking Purell. She reiterated that the Purell stayed in her tote bag, which she kept in the car when she was not at work. She explained that she had been doing that for about a year, and denied ever keeping Purell at her home. She admitted that she had not discussed this practice with any supervisor, but repeated that she did not have access to the facility's central supplies area. She agreed she could have left the Purell in her

locker at the facility, but noted that it was easier to leave it in her tote bag. She again denied ever taking any other items from the facility. (A 523; 103-12, 736-38, 739-41.)

Following the meeting, Driscoll asked DON O'Brien about the availability of Purell at the facility. O'Brien told him that the nurses and CNAs used it to supplement hand-washing, primarily between the passing of meals and the giving of medication. O'Brien also told him that the Nursing Home stored Purell in its Central Supply room. (A 523; 327-29, 790.)

G. Driscoll Meets with Mrs. Bjorkman and Two Union Representatives and Tells Them Mr. Bjorkman Had Given Him Razors; Driscoll Receives Letters and a Petition From A Majority of the Employees Vouching for Mrs. Bjorkman's Integrity

On December 16, Driscoll summoned Mrs. Bjorkman to his office at the end of her shift. She requested union representation, and Driscoll agreed. Mrs. Bjorkman, accompanied by Union Representatives Rick Fernandez and Tony Cruz, then met with Driscoll. (A 523; 54-55, 80.) Driscoll told Mrs. Bjorkman that her husband had given him razors, which her husband alleged she had stolen from the Nursing Home. Driscoll did not have the razors with him. Mrs. Bjorkman denied that accusation. (A 523; 54, 56, 76, 115-117, 212, 222.) She and the Union's two representatives asked Driscoll if he had spoken with any other employee about the allegation. Driscoll did not respond. They asked if he was investigating the other employees who were accused of theft by Mr. Bjorkman. Driscoll said no. They

asked for the names of those employees; Driscoll refused to provide any names. (A 523; 54-55, 80, 213.) Driscoll stated that he considered Mr. Bjorkman's credibility to be good. (A 523; 213.) One of the union representatives asked Driscoll if Mr. Bjorkman had ever been to the Nursing Home's facility and Driscoll said he did not know. (A 523; 222-23.)

About mid-December 1998, Driscoll received letters from two employees, and a petition from "primarily all the long-term employees in the facility" who worked on all the shifts, vouching for the honesty of Mrs. Bjorkman and stating that they had never seen her taking items for the facility. (A 523; 348, 426-28, 637-41.)

H. Driscoll Receives Mr. Bjorkman's Signed Affidavit; He Confronts Mrs. Bjorkman about the Allegations in the Affidavit and Suspends Her

During the first week of January 1999, Driscoll received Mr. Bjorkman's signed affidavit. (A 523; 456-57, 635-36.) On January 6, Driscoll wrote a summary of the investigation of the theft accusation against Mrs. Bjorkman. In it he concluded that "[b]ased on the information at hand, the physical evidence at hand, and [his] assessment of both, [Mrs. Bjorkman] had committed 'Theft or removal of property from the facility premises.'" (A 523-24; 351, 797-300.)

On January 7, Driscoll met with Mrs. Bjorkman and Union Representatives Fernandez and Cruz. (A 524; 56-57, 213-14.) Driscoll presented Mrs. Bjorkman

with a copy of her husband's affidavit, in which he accused her of stealing from the Nursing Home. Specifically, the affidavit accused Mrs. Bjorkman of stealing razors, shaving cream, toothbrushes and toothpaste, medical lotions and salves such as Ben-Gay and Neosporin on a regular basis. (A 524; 83-84, 635-36.) It also accused her of stealing facecloths, towels, sheets and blankets, and nutritional drinks intended for residents. (A 524; 83-84, 635-36.)

Mrs. Bjorkman denied the allegations in the affidavit. She pointed out that some of the basic information in the affidavit was wrong. For example, she pointed out that her husband had not lived at home until August 28, 1998, as his affidavit asserted. (A 524; 57-58.) She also noted that the Nursing Home did not store Ben-Gay at the facility. She explained that Ben-Gay was used at the facility only as a prescribed medication and was kept in the locked treatment cart that was not available to the CNAs. (A 58, 147-48, 171.)

Driscoll showed Mrs. Bjorkman two packages of Gillette disposable razors. He stated that her husband informed him that the razors came from her home. She denied that charge. (A 424-25; 58-59, 88, 120, 198-99.) She told Driscoll that her husband was sick, and that he was hospitalized at Tobey Hospital, the area's mental institution, on "suicide watch." (A 355.) She repeated that her husband had not lived at home since February 1998 when she obtained a restraining order against him. She asked Driscoll to check with the local police for court records

showing that her husband had been arrested for violating that order by breaking into her home in April 1998. (A 525; 57, 348-49.) She also suggested that Driscoll should call the Social Security Administration to find out where her husband's disability checks were being sent. She again asked Driscoll if he had spoken to her co-workers. Driscoll did not answer. (A 524-25; 58-59, 88, 120, 198-99.)

Union Representative Cruz stated that Tobey Hospital, where Mr. Bjorkman had been a patient repeatedly, used the same kind of razors as the Nursing Home. Cruz suggested that Mr. Bjorkman could have obtained the razors at Tobey Hospital. (A 525; 349, 432-33, 459, 809.) Both Cruz and Fernandez asked Driscoll if he was investigating the other employees who had been accused of theft by Mr. Bjorkman. Driscoll said no. (A 525; 59.)

To conclude the meeting, Driscoll told Mrs. Bjorkman that she was suspended, without pay, and "with a strong possibility of termination." (A 525; 58, 77, 101, 350.)

I. Driscoll Discovers that Tobey Hospital Uses the Same Razors as the Nursing Home; He Obtains a Copy of the Restraining Order Against Mr. Bjorkman; Driscoll Terminates Mrs. Bjorkman

After the meeting on January 7, Driscoll telephoned Tobey Hospital's Central Supply Department. He learned that Tobey Hospital used the same type of Gillette disposable razors as the Nursing Home used. (A 525; 360, 805.)

Driscoll then checked with the local district court, and obtained a copy of the restraining order that had been issued against Mr. Bjorkman on February 26, 1998. (A 448.) Driscoll also visited the local police station, where he discovered that Mr. Bjorkman had been arrested on October 4, 1998, for violating the restraining order. (A 525; 358-60, 448, 382, 804.)

The next day, January 8, 1999, Driscoll telephoned Mr. Bjorkman and spoke to his landlady, Mrs. Jackson, who stated that Mr. Bjorkman was hospitalized. (A 525; 353, 803.) Driscoll asked her when did Mr. Bjorkman start living in her home. She replied, "Quite a while ago." He asked her, "Can you remember more specifically . . . was it the end of August?" She agreed that it was around that time and added that he had lived "at home" before he moved in with her. (A 525; 354, 803.)

Later that day, Mr. Bjorkman telephoned Driscoll. In the conversation, Mr. Bjorkman confirmed that he had been hospitalized on "suicide watch." Driscoll expressed concern over his "health predicament." In response, Mr. Bjorkman explained that "it was one of those things, it [had] happened before," and that he "can only take so much." (A 355.) Mr. Bjorkman then admitted that he had been "forced" to leave his home in February 1998. He added, however, that he had moved back home in March, had stayed there until August, and had kept that fact

secret from the appropriate authorities so he could collect a full disability check. (A 525; 355-56, 449.)

On January 11, 1999, Driscoll telephoned Mrs. Bjorkman at home, and informed her that she was terminated. (A 525; 202.) A termination letter dated that same day notified Mrs. Bjorkman that she had been discharged for "unauthorized removal of [the Nursing Home's] property from the facility premises." (A 745.)

II. THE BOARD'S CONCLUSIONS AND ORDER

On the foregoing facts, the Board (Chairman Truesdale and Members Liebman and Hurtgen), in agreement with the administrative law judge, found that the Nursing Home violated Section 8(a)(3) and (1) of the Act (29 U.S.C. § 158(a)(3) and (1)) by suspending and discharging Mrs. Bjorkman for engaging in union and other protected concerted activities. (A 519, 527.) The Board's order requires the Nursing Home to cease and desist from the unfair labor practices found and from "in any like or related manner" interfering with, restraining, or coercing employees in the exercise their statutory rights. Affirmatively, the Board's order directs the Nursing Home to offer reinstatement to employee Mr. Bjorkman, to make her whole, to remove from its files any references to the unlawful discharge, and to post a remedial notice. (A 519, 527-28.)

SUMMARY OF ARGUMENT

Substantial evidence supports the Board's finding that the Nursing Home suspended and discharged Mrs. Bjorkman because of her union and other protected activities. The Nursing Home's knowledge of Mrs. Bjorkman's union activity is undisputed. Its animus towards the Union campaign, and towards Mrs. Bjorkman's activities in particular, was demonstrated by Administrator Driscoll's antiunion assertions during the campaign, and after the Union's election victory. In addition, the evidence amply supports the Board's finding that the Nursing Home's claimed reason for suspending and discharging Mrs. Bjorkman was pretextual. Also, the record fully supports the Board's finding that the investigation conducted by the Nursing Home was a total sham, and that the Nursing Home was inconsistent in its treatment of similarly situated employees.

The Nursing Home's principal challenge to the foregoing findings is to attack the administrative law judge's credibility resolutions. The record, however, fails to support that attack. The judge's credibility resolutions are thorough and detailed, and the Nursing Home offers no reason for rejecting them. In addition, the judge, whose decision was affirmed by the Board, offered a detailed analysis for his rejection of the Nursing Home's explanation for its conduct. Accordingly, the Board is entitled to enforcement of its order

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE NURSING HOME VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY SUSPENDING AND DISCHARGING EMPLOYEE NANCY BJORKMAN FOR ENGAGING IN UNION AND OTHER PROTECTED CONCERTED ACTIVITIES

A. Applicable Principles and Standard of Review

Section 8(a)(3) of the Act (29 U.S.C. § 158(a)(3)) prohibits employer "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Section 8(a)(1) of the Act (29 U.S.C. § 158(a)(1)) prohibits employers from interfering with, restraining, or coercing employees in the exercise of their statutory rights. Thus, an employer violates Section 8(a)(3) and (1) of the Act by discharging or taking other adverse action against an employee for engaging in union or other protected concerted activities. *NLRB v. Horizon Air Services, Inc.*, 761 F.2d 22, 27 (1st Cir. 1985).

Whether a discharge violates Section 8(a)(3) and (1) of the Act depends on the employer's motive. In *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the Supreme Court approved the test for determining unlawful motivation first articulated by the Board in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enforced on other grounds, 662 F.2d 89 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982). Under that test, a violation of the Act is

established where the General Counsel has shown that an employer's opposition to union or other protected activity was "'a substantial or a motivating factor for the discharge or other adverse action.'" *McGaw of Puerto Rico, Inc. v. NLRB*, 135 F.3d 1, 8 (1st Cir. 1997) (quoting *NLRB v. Horizon Air Services, Inc.*, 761 F.2d 22, 27 (1st Cir. 1985)). The General Counsel satisfies this burden by establishing (1) the employee's engagement in protected activity; (2) the employer's knowledge of the protected activity; (3) the employer's animus toward such activity; and (4) a causal connection between the animus and the action taken against the employee. *NLRB v. Transportation Management Corp.*, 462 U.S. at 397, 401-03. If the General Counsel meets these requirements, then the burden then shifts to the employer to prove, by a preponderance of the evidence, that it would have taken the same action even in the absence of the union or other protected activity. *Id.* See also *McGaw of Puerto Rico, Inc. v. NLRB*, 135 F.3d 1, 8 (1st Cir. 1997); *Yesterday's Children, Inc. v. NLRB*, 115 F.3d 36, 48-49 (1st Cir. 1997); *NLRB v. Crafts Precision Industries, Inc.*, 16 F.3d 24, 27 (1st Cir. 1994).

Because an employer rarely admits unlawful discrimination, the Board may rely on circumstantial evidence and inferences reasonably drawn from the totality of the evidence to determine motive. *NLRB v. Link-Belt Co.*, 311 U.S. 584, 602 (1941). Among the factors the Board may consider in assessing an employer's unlawful motive are the failure of the employer to fully investigate the purported

reasons for the discharge,⁴ differences in the application of disciplinary rules,⁵ and the employer's reliance on a pretextual justification for the adverse action.⁶

The Board's findings with respect to motivation are binding on the reviewing court if supported by substantial evidence "even though the court would justifiably have made a different choice de novo." *Universal Camera Co. v. NLRB*, 340 U.S. 474, 487-88 (1951). *Accord NLRB v. Horizon Air Services, Inc.*, 761 F.2d 22, 25 (1st Cir. 1985). Thus, this Court will "sustain inferences that the Board draws from the facts and its application of statutory standards to those facts and inferences as long as they are reasonable." *NLRB v. Laverdiere's Enterprises*, 933 F.2d 1045, 1050 (1st Cir. 1991). *See also Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1073 (1st Cir. 1981). Finally, "credibility of witnesses is for the administrative law judge to determine and the reviewing Court will set aside those findings only when he oversteps the bounds of reason." *NLRB v. American Spring Bed Mfg. Co.*, 670 F.2d 1236, 1242 (1st Cir. 1982). *Accord McGaw of Puerto*

⁴ *McGaw of Puerto Rico, Inc. v. NLRB*, 135 F.3d 1, 7 (1st Cir. 1997); *NLRB v. American Spring Bed Mfg. Co.*, 670 F.2d 1236, 1245 (1st Cir. 1982); *NLRB v. American Geri-Care*, 697 F.2d 56, 62-63 (2d Cir. 1982), cert. denied, 461 U.S. 906 (1983); *NLRB v. Esco Elevators, Inc.*, 736 F.2d 295, 297-99 n.2, 5 (5th Cir. 1984).

⁵ *Wyman Gordon Co. v. NLRB*, 654 F.2d 134, 141 (1st Cir. 1981); *Cumberland Farms, Inc. v. NLRB*, 984 F.2d 556, 560 (1st Cir. 1993); *American Thread Co. v. NLRB*, 631 F.2d 316, 322 (4th Cir. 1980).

⁶ *Wright Line*, 251 NLRB 1083, 1084 (1980); *Yesterday's Children, Inc. v. NLRB*, 115 F.3d 36, 44 (1st Cir. 1997).

Rico, Inc. v. NLRB, 135 F.3d 1, 7, (1st Cir. 1997); *Yesterday's Children, Inc. v. NLRB*, 115 F.3d 36, 44 (1st Cir. 1997).

B. The Evidence Supports the Board's Finding that the Nursing Home Discharged Mrs. Bjorkman For Her Union Activities

The facts establish that Mrs. Bjorkman was an excellent employee who had never been disciplined, had absolutely no problems with her job performance, and was well-respected by both employees and supervisors. In addition, Mrs. Bjorkman was the Union's most open and devoted adherent. She spearheaded the Union's two organizing drives to obtain representation for the Nursing Home's CNAs. On both occasions, she contacted the Union, met with its representatives, obtained and distributed authorization cards, and served as an election observer for the Union. When the Union lost the first election in 1996, she was not deterred. Rather, two years later, she initiated a second organizing drive, and the Union won the ensuing election and was certified by the Board. She then served as a member of the Union's bargaining committee, and was its most active participant at the time of her discharge.

In finding that the Nursing Home's discharge of Mrs. Bjorkman was unlawfully motivated, the Board relied on the Nursing Home's admission of knowledge of Mrs. Bjorkman's extensive union activities. (A 33, 206, 254-56.) The Board also relied on evidence showing the Nursing Home's anti-union animus, on the Nursing Home's sham investigation of the theft accusations made against

Mrs. Bjorkman by her estranged and mentally disturbed husband, and on the Nursing Home's treatment of Mrs. Bjorkman as compared to other employees who were also accused of theft. The Board thus found (A 526) that the Nursing Home's asserted reason for suspending and discharging Mrs. Bjorkman was pretextual. As we show below, the record amply supports those findings.

Initially, it is undisputed--indeed, stipulated (A 33, 206, 254-56)--that the Nursing Home's managers knew that Mrs. Bjorkman was the employees' leader in the union effort, first, to obtain union representation in 1998, and second, to negotiate a collective-bargaining agreement. In addition, the evidence places in bold relief the Nursing Home's animus against the unionization effort that Mrs. Bjorkman spearheaded and its particular hostility towards Mrs. Bjorkman's activities. Administrator Driscoll, who was new to the facility during the last month of the 1998 organizing campaign, was admittedly opposed to unionization. (A 263-66.) Driscoll directed the Nursing Home's antiunion campaign, convening numerous management meetings in which he ordered the supervisors to "go out and tell the employees that the Union would be a bad thing." (A 139, 166-168.)

The Nursing Home's hostility against Mrs. Bjorkman's union activities, in particular, was also evident in Driscoll's admission that his primary recollection of the 1998 election campaign was "the feeling of just fatigue" that the Nursing Home "had just gone through this [an organizing drive in 1996] and why was this

happening again. . . ." In that context, he specifically recalled (A 255, 256) that "maybe two to three dozen times [during his] first five or 10 days Nancy Bjorkman's name came up as the driving force behind the petition drive." In addition, shortly after the Union's election victory, he referred to Mrs. Bjorkman as "a pain in the ass" or "a thorn in the side" for, among other things, making him "eat crow" by admitting that his statement in a newspaper interview about the cost of health insurance to the employees was wrong. (A 260-61.) Driscoll's strong animus against union activity was clearly revealed by his treatment of a per diem supervisor, Michael Silva. After Mr. Bjorkman accused Silva of helping the Union, Driscoll barred Sylvia from ever entering the facility again.

Against this backdrop of the Nursing Home's hostility against Mrs. Bjorkman's union activities, there is overwhelming evidence that the asserted reasons for her suspension and discharge were sheer pretexts. Thus, before the Board, and here, the Nursing Home contends (Br 32, 46, 48) that Mrs. Bjorkman was discharged because it believed, in good faith, that she stole supplies. For support, the Nursing Home points to the fact that Mr. Bjorkman provided "physical evidence" of theft--specifically--two packs of disposable razors that he claimed he obtained from Mrs. Bjorkman's home. However, examination of the Nursing Home's contention leaves little, if any, room to doubt that the Board was warranted in rejecting the contention as a pretext.

At the outset, the Nursing Home's claim of "good faith" is severely undermined by the fact that the sole basis of its investigation of Mrs. Bjorkman was the allegations of her estranged husband, whose sole and express motive was "revenge." Further, Administrator Driscoll's confessed impressions of Mr. Bjorkman belie good faith in the pursuit of Mr. Bjorkman's allegations. As the administrative law judge observed (A 527), Driscoll did not consider Bjorkman to be trustworthy. Thus, Driscoll stated (A 449) that "[t]here was no question in [his] mind to begin with that this man was willing to lie." Driscoll admitted (A 304-05) that even after he received the razors, and a statement from Mr. Bjorkman, he was reluctant to confront Mrs. Bjorkman because he did not have "100 percent confidence in Mr. Bjorkman's credibility and [he] was looking forward to a signed affidavit to give the allegations even more credence." Driscoll further stated (A 310) that he disbelieved Mr. Bjorkman's explanation for not returning the affidavit timely, because that explanation "didn't sound like it had a grain of salt in it." Indeed, Mr. Bjorkman disclosed to Driscoll that he had been hospitalized in a mental institution, under a suicide watch. Driscoll's reliance on Mr. Bjorkman's allegations cannot be reconciled with Driscoll's own doubts about his varacity, and calls into question the Nursing Home's defense that it acted in good faith.

The Board's conclusion that the Nursing Home's investigation was not conducted in good faith is compelled by the facts showing that Driscoll knowingly

ignored important evidence that strongly countered Mr. Bjorkman's assertion that he had gotten the packs of razors from Mrs. Bjorkman's home. Thus, after he suspended Mrs. Bjorkman, Driscoll found out from court records that a restraining order had been issued against Mr. Bjorkman on February 26, 1998, which barred him from his wife's home and workplace for a full year. (A 368-70, 636-37.) In addition, Driscoll received a copy of a police report dated October 4, 1998, which revealed that Mr. Bjorkman had been arrested for violating that order. (A 638.) Further, Driscoll also discovered that the razors Mr. Bjorkman provided were also available at Tobey Hospital where Mr. Bjorkman had been hospitalized. (A 383-84)

Driscoll testified (A 394), however, that none of that evidence even gave him pause, though, at a minimum, it undermined Mr. Bjorkman's assertion that he got the razors from Mrs. Bjorkman's home. Indeed, Driscoll's ignoring evidence that those same razors were accessible to Mr. Bjorkman elsewhere than from Mrs. Bjorkman's home, strongly supports the administrative law judge's conclusion (A 526) that Mrs. Bjorkman's "guilt or innocence" made no difference "whatsoever in the decision to terminate her."

The serious questions surrounding the credibility of Mr. Bjorkman highlight why, contrary to the Nursing Home's contention (Br 55), its failure to call Mr. Bjorkman to testify justifiably and fatally crippled its case before the Board.

Driscoll's testimony reflects that he had no first-hand knowledge on key issues related to the razors. For example, Driscoll did not ask Mr. Bjorkman if he took the razors from Tobey Hospital where he had been a patient, and he did not ask if Mr. Bjorkman may have taken the razors from the Nursing Home's facility. Indeed, Driscoll claimed to have been completely unaware (A 222-23) that Mr. Bjorkman had been found wandering around in the Nursing Home's facility one or two days after he first accused his wife of theft. (A 524; 507-08.)

In short, Mr. Bjorkman was the sole source of evidence adverse to Mrs. Bjorkman. In the absence of any evidence or representation that he was unavailable to the Nursing Home as a corroborating, if not central, witness, the administrative law judge acted well within his discretion in drawing an adverse inference against the Nursing Home. *See NLRB v. Cornell of California, Inc.*, 577 F.2d 513, 517 (9th Cir. 1988) (adverse inference is appropriate where a party fails to call a witness with direct knowledge of and participation in material events); *Property Resources Corp.* 285 NLRB 1105, 1105 n.2 (1987) ("An adverse inference is properly drawn regarding any matter about which a witness is likely to have knowledge if a party fails to call the witness to support its position and the

witness may reasonably be assumed to be favorable to the party."), *enforced*, 863 F.2d 964, 966 (D.C. Cir. 1988).⁷

Moreover, as the administrative law judge observed (A 526), even though Mr. Bjorkman also accused employee Lima--who was not active in the Union--of stealing from the Nursing Home, Driscoll did "virtually nothing" to investigate the claim. Thus, the evidence shows that once Driscoll discovered that the Nursing Home's inventory procedures did not allow for determining if some supplies had been stolen, he dropped all inquiry into Mr. Bjorkman's allegations against employee Lima. In contrast, as the administrative law judge noted (A 526), the Nursing Home's past practice was to interview other employees in the case of accusations such as theft. Thus, in investigating employee Christopher Rogers, who was suspected of stealing food, the Nursing Home conducted numerous interviews with his co-workers. Those employees provided statements linking Rogers, not only to the theft that was being investigated, but also to prior thefts. (A 503-04, 529-40.) As to Nurse Marianne Carvan, one of her co-workers reported seeing her steal medication. (A 236-38.) The Nursing Home confronted

⁷ The Nursing Home's related claim (Br 56) that the adverse inference was inappropriate because the General Counsel and Mrs. Bjorkman did not attempt to subpoena Mr. Bjorkman to testify is without merit. *See International Union (UAW) v NLRB*, 459 F.2d 1329, 1338 (D.C. Cir. 1972) ("the applicability of the [adverse inference] rule in no way depends on the existence of a subpoena compelling production of the evidence in question").

Carvan, and she admitted the theft. (A 238.)⁸ Here, the Nursing Home's failure to ask other employees about Mr. Bjorkman's accusations against employee Lima, was inconsistent with how it had dealt in the past with others accused of serious misconduct.

As the administrative law judge observed (A 526), in marked contrast to employee Lima's situation, the defect in the very same inventory procedure did not stop Driscoll from pursuing Mr. Bjorkman's allegations against Mrs. Bjorkman. Rather, Driscoll pursued them by willingly substituting his own inventory controls with "physical evidence" Mr. Bjorkman provided allegedly from Mrs. Bjorkman's home. Driscoll, however, never asked whether Mr. Bjorkman had any physical evidence to support the allegations he had also made against Lima. The disparity between Driscoll's dogged pursuit of Mr. Bjorkman's allegations against Mrs. Bjorkman and his abbreviated investigation of Lima supports the Board's finding of unlawful motive. *See Yesterday's Children, Inc. v. NLRB*, 115 F.3d 36, 49 (1st Cir. 1997) ("The existence of disparate treatment for similar misconduct can support a finding of improper motive."); *Wyman Gordon Co. v. NLRB*, 654 F.2d 134, 141 (1st Cir. 1981) (disparate treatment of union supporter is suggestive of

⁸ Although the Carvan case occurred long after the discharge of Mrs. Bjorkman, and generally would be irrelevant to the Nursing Home's conduct at the time of Mrs. Bjorkman's discharge, the judge cited the investigation in that case to buttress his conclusion that the Nursing Home had a continuing practice of confronting employees accused of theft.

improper motive); *Cumberland Farms, Inc. v. NLRB*, 984 F.2d 556, 560 (1st Cir. 1993) (same).

Contrary to the Company (Br 27, 33), the inference of unlawful motive that the Board drew from the disparity between the investigations of Mrs. Bjorkman and employee Lima, is not undermined by the absence of any investigation of employee Cardoza, who was a union activist. First, there is no record support for the Nursing Home's assertion that Mr. Bjorkman accused employee Cardoza of stealing. Rather, as shown, Mr. Bjorkman allegedly said his wife was stealing pills and giving them to Cardoza. (A 269, 272.) In any event, the fact that the Nursing Home took no action against Cardoza hardly undermines the inference of unlawful motive that the record affirmatively supports in the case of Mrs. Bjorkman. *See NLRB v. Puerto Rico Telephone Co.*, 357 F.2d 919, 920 (1st Cir. 1966) ("fact that other union activists were retained by company" held not controlling, the Court stating that "[a] violation of the Act does not need to be wholesale to be a violation"); *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964) ("a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents"); *Clark & Wilkins Industries v. NLRB*, 887 F.2d 308, 316 n.9 (D.C. Cir. 1989), cert. denied, 495 U.S. 934 (1990).

Significantly, the Nursing Home failed to give any weight to information that was favorable to Mrs. Bjorkman. When, on their own volition, "primarily all the long-term employees in the facility" sent Driscoll two letters and a petition, which supported "the fact that [Mrs. Bjorkman] had not taken anything out of the facility," he completely ignored that evidence. (A 398, 425-26, 428, 637-41.) Incredibly, Driscoll claimed (A 423-24) that those statements provided him with the information that he was seeking. As the administrative law judge specifically observed (A 526-27), the only conclusion that Driscoll could have rationally drawn from those petitions was that Mrs. Bjorkman was honest and trustworthy. However, he evidently did not want to develop evidence to support that proposition. *See NLRB v. Advance Transportation Co.*, 979 F.2d 569, 574 (7th Cir. 1992) (employer's "failure to thoroughly investigate alleged misconduct" supports finding of unlawful discharge); *NLRB v. Esco Elevators, Inc.*, 736 F.2d 295, 297-99 n.2, 5 (5th Cir. 1984) ("A one-sided investigation into employee misconduct supplies sufficient evidence that disciplinary action was triggered by an unlawful motive.").

The Nursing Home gains little by suggesting that, even in the absence of her union activity, Mrs. Bjorkman would have been discharged for stealing the Purell lotion. In support, the Nursing Home points to its employee handbook, which states (A 707) that removal of property from the facility is punishable by

immediate termination. However, it is clear that the Nursing Home did not consider Mrs. Bjorkman's possession of a 4-ounce bottle of Purell a violation of its policy, for it did not discharge her immediately as required by the cited policy. Significantly, in Driscoll's summation of the evidence favoring the discharge of Mrs. Bjorkman, which he wrote on January 6, 1999, a day before he suspended Mrs. Bjorkman, he did not mention Purell, and on that day he had long concluded his cursory inquiry into the Purell matter. (A 523-24.) That evidence supports the administrative law judge's finding (A 525) that Mrs. Bjorkman's removal of Purell from the facility was of no consequence and was merely used as a makeweight to bolster the Nursing Home's theft case against her.

Finally, the Nursing Home challenges (Br 43-46) the Board's finding of union animus on the ground that the administrative law judge impermissibly relied on protected speech. However, employer statements that are not unlawful but nonetheless reveal opposition not only to unionization, but also "to lawful activity by employees in their pursuit of their objectives" may be relied upon to show antiunion animus. *NLRB v. Eastern Smelting & Refining Corp.*, 598 F.2d 666, 670 (1st Cir. 1979). Such statements serve "to draw the background of the controversy and place other nonverbal acts in proper perspective." *Auto Workers v. NLRB*, 363 F.2d 702, 707 (D.C. Cir.), cert. denied, 385 U.S. 973 (1966). *Accord Holo-Krome Co. v. NLRB*, 907 F.2d 1343, 1346 (2d Cir. 1992).

Here, in any event, the administrative law judge did not base his animus finding solely on Driscoll's pre-election expressions of disdain and arrogance about the Union, or his post-election comment that Mrs. Bjorkman "was a pain in the ass" for making him eat crow. Rather, the administrative law judge also specifically relied (A 526) on the Nursing Home's failure to properly investigate the theft accusations, its departure from past practice, its disparate treatment of Mrs. Bjorkman in comparison to other employees who were also accused of theft, and the pretextual nature of the Nursing Home's asserted reason. Therefore, Driscoll's "pain in the ass" reference to Mrs. Bjorkman's letter-writing activity, and his general expressions of hostility during the campaign meetings, were only additional background evidence that served to put Mrs. Bjorkman's suspension and discharge in context. The use of lawful speech for such purposes is proper. *See Active Transportation Co.*, 296 NLRB 431, 431 n.3 (1989), enforced, 926 F.2d 1057 (6th Cir. 1991).

In all the circumstances, the Nursing Home's claim that it had a good faith belief that Mrs. Bjorkman was guilty of theft is contrary to the record as a whole. Mrs. Bjorkman was a longtime employee with an impeccable record. The investigation against her based solely on Mr. Bjorkman's accusations had all the earmarks of a pretext to hide unlawful motive. Indeed, viewed as a whole, the record supports that the Nursing Home's explanations for its actions are wholly

implausible, and therefore a clear indication of pretext. *See Yesterday's Children, Inv. v. NLRB*, 115 F.3d 36, 49 (1st Cir. 1997)("implausible explanations" support finding of pretext).

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the Court should enter a judgment denying the Nursing Home's petition for review and enforcing the Board's order in full.

Frederick C. Havard
Supervisory Attorney

Joan E. Hoyte
Attorney

National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570
(202) 273-2991
(202) 273-1793

LEONARD R. PAGE
Acting General Counsel

JOHN H. FERGUSON
Associate General Counsel

AILEEN A. ARMSTRONG
Deputy Associate General Counsel

National Labor Relations Board

January 2001

T:Bourne Manor.#fh